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EPA Plan for Top Environmental Equity Job Faces Long Road Ahead

Dean Scott, Bloomberg Law

<https://news.bloomberglaw.com/environment-and-energy/epa-plan-for-top-environmental-equity-job-faces-long-road-ahead?context=search&index=3>

The Environmental Protection Agency's quest to elevate its top environmental justice post to one that needs Senate confirmation may drag into next year—if it happens at all—despite being a top priority for the Biden administration.

Congress still needs to authorize the position at a time when it has numerous competing priorities. In addition to getting through the Senate, the new appointee would need to assuage the concerns of labor unions, which would have some say in shaping any reorganization of the EPA's existing environmental justice employees. That process alone typically takes at least several months, according to a union official.

EPA's proposal—outlined in its fiscal 2022 budget plan—calls for a new national environmental justice office under a newly created assistant EPA administrator. But the agency has yet to unveil a detailed plan for the national program.

"It's not as easy as it sounds—it's like getting a ship built," said Mustafa Santiago Ali, who helped lead the EPA's environmental justice effort for decades before resigning early in the Trump administration.

'Fooling People'

How the agency will get congressional authorization remains unclear.

The EPA's existing Office of Environmental Justice is tucked into its Office of Policy. Creating an assistant administrator position would put its top environmental justice official on par with other assistant administrators—overseeing air, water, and enforcement for example—who act essentially as lieutenants to the administrator.

Reorganizing the top tier of the agency in such a way would most directly affect the more than two dozen employees working in the current environmental justice office, which is headed by a director, Matthew Tejada. However, roughly 80 agency employees have some role in addressing environmental justice issues, including in EPA's 10 regional offices.

Authorization for a Senate-confirmed post hasn't made it into the EPA fiscal 2022 budget spending measure, which is part of the broader EPA-Interior appropriations bill that the House Appropriations Committee cleared July 1, according to a committee spokesman.

Discussions are continuing between the committee and EPA on the proposal, according to congressional aides familiar with the issue.

Multiple options exist for attaching such language in legislation, particularly bills with bipartisan backing and thus more likely to get to the floor—from a water infrastructure measure to the bipartisan infrastructure package, a Senate Democratic aide said. But there's been little or no discussion on how to handle the EPA's push to create the new position, the aide said.

Sen. Tom Carper (D-Del.), who chairs the Senate Environment and Public Works Committee, said opting to make the post Senate-confirmed signals the EPA's seriousness in making environmental justice an important priority.

Carper's panel would hold the initial vote on confirming a nominee. But it will be an empty gesture if Congress doesn't ramp up funding to battle environmental inequities, he said.

"We could have somebody who wears the title but if we don't actually provide the funding to make it real, then we are just fooling people," Carper said.

'Won't Be Shortchanged'

Unions embrace the agency's push to elevate environmental justice issues. But they're sensitive to any reorganizations

following the Trump administration's controversial moves, including relocating the Bureau of Land Management's headquarters from Washington, D.C. to Grand Junction, Colo.

The reorganization would require consultation with union representatives, who say those discussions could take six months or more, based on past reorganizations.

Nicole Cantello, an EPA attorney in the agency's Midwest region and president of the American Federation of Government Employees Local 704 in Chicago, said the union "would be generally supportive of EJ being infused into all facets of the agency."

However, the union would make sure workers "won't be [...]"

Fenceline community groups call for changes to TSCA risk evaluation approach

Kelly Franklin, Chemical Watch

<https://chemicalwatch.com/303742/fenceline-community-groups-call-for-changes-to-tsca-risk-evaluation-approach>

Several community organisations have urged the US EPA to revise the scope of its ongoing TSCA risk evaluations and collect more data from industry to ensure its reviews "account fully for the disproportionate and cumulative risks" faced by residents that live in close proximity to manufacturing facilities.

The groups' call to action comes amid an increasing agency focus on environmental justice concerns, and describes the sorts of steps that the EPA might consider as it works to ensure its chemical risk assessments fully account for the most exposed subpopulations.

Earthjustice submitted a 15 July letter to EPA chemicals head Michal Freedhoff on behalf of seven organisations representing communities especially affected by chemical exposure due to their proximity to clusters of manufacturing facilities, including those along the Texas Gulf Coast and in 'Cancer Alley' along the Mississippi River (see box).

In the letter, which posted to the public docket on 20 July, the groups reiterated a request they previously made in an April meeting for the EPA to:

- revise its completed scope documents for chemicals undergoing risk evaluation to specifically identify as 'potentially exposed or susceptible subpopulations' the communities near facilities that manufacture, process, use, release, dispose of, or recycle the chemicals, as well as communities near other sites contaminated with them;
- conduct cumulative risk assessments that "capture the affected communities' real-world exposures" to multiple chemicals of concern; and
- expand the data that EPA collects and considers.

'Critical work remains'

The EPA in recent months has announced significant steps to gather more data from industry and more fully address exposures to particularly exposed populations, including by pledging to conduct screening-level analyses on six of its first ten completed risk evaluations to determine if they require supplementing.

The path for the next 20 high-priority chemicals and the manufacturer-requested substances currently undergoing risk evaluation, however, has yet to come into focus.

The EPA has signalled it is scrutinising the scopes of the risk evaluations to ensure that disproportionately impacted communities are "properly evaluated", but has not elaborated on those plans. The EPA said it will review the letter along with other comments submitted to the docket and respond appropriately.

"EPA has told us that the agency is considering its options regarding the completed scopes and what methodologies to use for evaluating risks to frontline communities," said Katherine O'Brien, senior attorney at Earthjustice, who submitted the letter on behalf of the community organisations. It has not, however, committed to revising the documents, she said.

With respect to testing and reporting, the agency in recent months has announced several initiatives, including requiring the submission of health and safety studies related to the 20 high-priority chemicals under TSCA section 8(d), consulting on a broad new data-collection effort, as well as issuing test orders for nine of the substances, with 11 more orders reportedly in the works.

Steps like these "are moving EPA in the right direction," said Ms O'Brien. But "critical work remains."

The groups called for the agency to impose more testing and reporting requirements to satisfy its mandate to consider all 'reasonably available' information, including:

- adding all high-priority chemicals and manufacturer-requested substances to the toxic release inventory (TRI) to better monitor releases;
- using its section 4 test authority to order hazard testing and "fenceline monitoring", such as by requiring manufacturers to conduct sampling of ambient air, surface water and sediment near sites where substances are manufactured, processed, used or disposed of;
- continuing to use sections 8(a) and 8(d) to compel additional reporting and information submission, including from processors; and [...]

Don't let US EPA delay decaBDE lawsuit further, NGOs tell court

Kelly Franklin, Chemical Watch

<https://chemicalwatch.com/302808/dont-let-us-epa-delay-decabde-lawsuit-further-ngos-tell-court>

The US EPA's ongoing reevaluation of a TSCA rule prohibiting most uses of the flame retardant decaBDE only offers "speculative prospects" of addressing concerns raised by environmental groups and it is now time for a federal court to review the agency's actions, NGO petitioners have said.

The groups' concern over the "indeterminate administrative review" process highlights the pressure on the agency to work quickly to revisit decisions made by the previous administration, with public health advocates eager to see tougher rules brought into force and industry groups anxious to confirm their regulatory obligations.

In a 19 July court filing, the EPA reiterated its earlier request that the US Court of Appeals for the Ninth Circuit extend a pause on the legal challenge to its TSCA risk management rule for decaBDE. The rule, finalised in the final days of the Trump administration, is one of five issued in December 2020 to address a group of persistent, bioaccumulative and toxic (PBT) substances.

NGO petitioners in the case did not protest when the EPA requested in April to delay the case until 1 July so it could take public comments on all five PBT rules and weigh whether changes are needed to them.

But the environmental groups have asked the court to deny the EPA's request to continue to hold the case in abeyance for another three months – until 7 October.

"EPA has now had almost six months to review the final rule since the issuance of President Biden's executive order, and nearly two months since the close of the additional public comment period EPA initiated on the final rule," the

petitioners said in a 12 July filing. "Yet EPA now asserts that an additional stay of more than three months is warranted without making any commitment even to conclude its review of the final rule within that period – or, indeed, within any defined period – let alone take action to correct the serious legal defects in the rule."

The agency told the court on 19 July it would file by the end of the October abeyance period a certified index to the administrative record, setting out the body of evidence relevant to the case.

The EPA told Chemical Watch it "is reviewing the feedback received and will keep stakeholders updated as next steps are determined" for completing the review of decaBDE.

"We are disappointed by EPA's refusal to commit to any deadline for concluding its administrative review of the risk management rule," said Katherine O'Brien, senior attorney at Earthjustice.

"Congress directed EPA to take expedited action to manage the serious risks decaBDE poses to human health and the environment. It is past time for the agency to fulfil that mandate," she said.

Stakeholders See EPA's 'Tiered' TSCA Data Rule Aiding Pre-Prioritization

Maria Hegstad, Inside TSCA

<https://insideepa.com/tsc-news/stakeholders-see-epa-s-tiered-tsc-a-data-rule-aiding-pre-prioritization>

An industry attorney and an environmentalist say EPA's planned model TSCA reporting rule that would set "tiered" requirements for chemicals at various stages of evaluation, including before the prioritization process starts, could help close persistent data gaps in the evaluation process -- but also that the agency might not be nimble enough to execute it.

In recent interviews, an environmentalist and a former Trump EPA chemicals official both told Inside TSCA that the agency's July 14 announcement of the planned reporting rule hints that officials could revive the Obama-era effort to develop a "pre-prioritization" process for gathering toxicity data and other information on chemicals before it formally designates them as "high-priority" under the Toxic Substances Control Act (TSCA).

EPA's rule "seems to be an effort to revive the original thinking of the Obama administration. They proposed a pre-prioritization process. It seems to be a resurrection of that concept," the environmentalist says. "The idea is that EPA needs to start gathering information before it gets to actual prioritization and to risk assessment and risk management, using a number of reporting tools to do that. I think that's very sound."

While EPA has not floated specific regulatory text, it said in a July 14 Federal Register notice that it "is exploring a data reporting rule that is tiered to specific stages of the TSCA existing chemicals program," with separate requirements for "Identifying a pool of substances as potential candidates for prioritization," prioritizing chemicals for review, and finally evaluating their risks.

The environmentalist acknowledged that "[t]here are a lot of complexities to be worked out here, but I think the concept is a good one . . . it sounds like they want to start developing a type of candidate list for prioritization, chemicals that they are not yet ready to prioritize but they think would be good candidates and they want to set in motion. And that's a good thing to do."

Under the reformed TSCA enacted in 2016, "prioritization" is a strictly defined process of evaluating chemicals over the course of six to nine months to determine whether they are high or low priority for risk evaluation. Once EPA designates a chemical as high-priority, it must immediately begin a risk evaluation, with a three-year statutory deadline to finalize that review.

Soon after Congress passed the new law the Obama EPA proposed creating a "pre-prioritization" step that would help

identify candidates for evaluation before the statutory timeline starts to run, giving officials more opportunity to weigh their decisions and identify gaps in data on each chemical. But the Trump EPA dropped the plan, saying there had been too little agreement among stakeholders in comments on the idea to include it in the final risk evaluation rule.

But David Fischer, who served as deputy assistant administrator of the Trump EPA's chemicals office and is now counsel with the firm Keller and Heckman, said officials during his tenure were still looking for ways of "front-loading" the prioritization process, hoping to address the same hurdles that the Obama-era pre-prioritization model would have targeted.

Fisher told Inside TSCA that he "really focused on front loading, even before the prioritization process. Once that starts there's no way to turn off the machine, it keeps running through risk management."

In pursuit of that goal, Fischer said, he and other officials discussed how to build the TSCA evaluation system "so you can get data in plenty of time to analyze it" and to seek clarification on any open questions "even before prioritization."

He noted that TSCA does not allow "for EPA to look at the data and then decide to pull something off the machine. That's why it's such a big deal to start the machine."

The newly announced rule would help officials gather more data before "starting the machine," in addition to setting requirements for later steps [...]

Legacy asbestos suit delayed amid 'positive' settlement talks

NA, Inside TSCA

<https://insideepa.com/tsca-takes/legacy-asbestos-suit-delayed-amid-positive-settlement-talks>

A federal district judge has postponed briefing deadlines in environmental and public health groups' suit seeking an enforceable deadline for the TSCA evaluation of legacy asbestos uses, after the two sides announced that they "have been engaged in positive settlement discussions" that could resolve the case.

In a July 16 order, District Judge Phyllis L. Hamilton granted a joint request from the two sides for more time to resolve the case and postponed the deadline as requested -- though she noted that she still intends to hold a case management conference (CMC) to set terms for further proceedings.

"The court will not, however, indefinitely vacate a CMC in this matter pending the parties' settlement discussions. Given that, the court CONTINUES the August 19, 2021 CMC to the court's January 20, 2022 CMC calendar," her order says.

Hamilton's order responds to a July 15 stipulation where all parties in Asbestos Disease Awareness Organization (ADAO), et al., v. EPA asked the U.S. District Court for the Northern District of California to push back EPA's deadline to answer the plaintiffs' complaint from July 19 to Oct. 18 in order to allow more time for negotiations.

"The Parties have been engaged in positive settlement discussions and believe that continuing the case management conference and extending the deadline for EPA's Answer for 90 days will enable the parties to complete these discussions as efficiently as possible," their filing says.

Any settlement in the case could lead to a judicially enforceable deadline for EPA to craft its Toxic Substances Control Act (TSCA) risk evaluation of discontinued "legacy" asbestos uses and uses of non-chrysotile fibers -- which the agency has framed as the second part of a process that began with its Trump-era evaluation that was limited to current uses of chrysotile asbestos.

ADAO and its allies have said that even though EPA is voluntarily pursuing the legacy evaluation, it has "provided no specifics about how it would be conducted and failed to set a schedule for completing it. Thus, EPA failed to complete a

full asbestos risk evaluation in accordance with TSCA by the June 19, 2020 deadline in the law.”

Several of the same groups are also in settlement talks with EPA for their challenge to the Trump-era “part 1” TSCA evaluation of chrysotile asbestos pending in the U.S. Court of Appeals for the 9th Circuit, with briefing there recently delayed to Oct. 27.

House OKs Far-Reaching PFAS Control Bill With Some GOP Support

Pat Rizzuto and Kellie Lunney, Bloomberg Law

<https://news.bloomberglaw.com/environment-and-energy/house-oks-far-reaching-pfas-control-bill-with-some-gop-support?context=search&index=0>

The House approved a comprehensive bill requiring the EPA to regulate the most concerning “forever chemicals” and make decisions on others—but its Senate prospects are unclear.

The PFAS Action Act of 2021 (H.R. 2467) was approved Wednesday on a 241-183 vote, with 23 Republicans supporting the bill.

In backing the measure, House Speaker Nancy Pelosi (D-Calif.) pointed to the potential for some per- and polyfluoroalkyl substances to harm infants and children, something Environmental Protection Agency researchers have recognized since at least 2005. Additional problems associated with some of the thousands of PFAS include reduced vaccine effectiveness, elevated cholesterol, and increased risk of kidney and testicular cancer.

The White House backed the bill in a Monday statement. No companion bill has been introduced in the Senate, where a similar House-approved measure died in the last Congress.

Action addressing PFAS contaminants is on the radar of both parties given the sheer magnitude of the issue, which affects thousands of communities across the country, lowering property values and raising health fears. Numerous states have passed their own laws, but Debbie Dingell (D-Mich.)—the bill’s lead sponsor—and other supporters said a national solution is needed.

Exclusions Approved

Amendments lawmakers approved to the bill would exclude PFAS used for research and development related to medicines, medical devices, and personal protective equipment needed to protect health care providers.

The amended bill also would add the electroplating, metal finishing, leather tanning and finishing, paint, plastics molding, and electrical and electronic components industries to those for which the EPA must establish Clean Water Act effluent limits and pretreatment standards. The standards would cover PFOA and PFOS.

And the amended bill would authorize a five-year \$100 million grant program to allow schools to test for and remediate PFAS. That funding would be in addition to the \$1.5 billion over fiscal years 2022-2026 that the bill would authorize for state and community water system grants.

Authorized money, however, is not guaranteed, requiring the need for money to come through the annual appropriations process.

The bill would establish a five-year moratorium on the EPA’s approval of new PFAS into commerce while chemical manufacturers generate toxicity and other test data on existing forms of the chemicals.

Industry Opposition

Multiple industries and some governmental groups oppose the bill. They include the American Chemistry Council, the chemical industry’s primary trade association, and a coalition of water, governmental and other organizations including

the American Council of Engineering Companies, the U.S. Conference of Mayors, and National Association of Clean Water Agencies.

The American Chemistry Council objects to the bill as a “one-size-fits all approach to regulating the wide variety of PFAS chemistries.”

Republicans such as Cathy McMorris Rodgers (R-Wash.) repeated on Wednesday previous statements about the bill crippling the aerospace, medical, semiconductor, pipeline, and other industries, which have parts that rely on PFAS. The bill acts as a defacto ban on materials that are critical for America, she said.

Dingell and other Democrats countered that the bill directly targets only PFOA and PFOS, and neither are made in the the U.S. The bill won't prevent every PFAS chemical from being used in products society needs, but it will make sure ones that need to be cleaned up are, said House Majority Leader Steny Hoyer (D-Md.).

The water, waste, and air regulations that the bill mandates in the near term would apply to those two chemicals. But the bill requires the EPA to gather information about others and determine whether and what regulations are needed for them.

Senate Work

Sen. Shelley Moore Capito (W.Va.), the top Republican on the Environment and Public Works Committee, has pushed the EPA to get more [...]

Connecticut Bans PFAS From Firefighting Foam, Food Packaging

Pat Rizzuto, Bloomberg Law

<https://news.bloomberglaw.com/environment-and-energy/connecticut-bans-pfas-from-firefighting-foam-food-packaging?context=search&index=2>

Connecticut on Tuesday joined the growing number of states banning “forever chemicals” from firefighting foam and food packaging.

Gov. Ned Lamont (R) signed Public Act No. 21-191, which phases in a ban of specialized firefighting foams containing certain per- or polyfluoroalkyl substances, or PFAS. The compounds are known as “forever chemicals,” because some take extraordinary means to destroy once released into the environment.

- The law also phases out the intentional use of PFAS in food packaging, as other states and companies such as Wendy's Co. and McDonalds Corp. are doing. The chemicals must no longer be in packaging sold or distributed in the state effective Dec. 31, 2023.
- Connecticut's law further mandates a takeback program to collect firefighting foam containing PFAS. The state determined before banning the firefighting foam that NationalUniversal® F3Green can effectively substitute without putting people's health or the environment at risk.
- Vermont banned PFAS from firefighting foam and food packaging earlier this year. Overall, 18 states have restrictions on firefighting foam with PFAS, while five have restrictions on the chemicals in food containers.

'Burden falls on exposed people' as EPA weighs PFAS rules

Ariel Wittenberg and E.A. Crunden, E&E News

<https://subscriber.politicopro.com/article/eenews/2021/07/21/burden-falls-on-exposed-people-as-epa-weighs-pfas-rules-179982>

GREENWIRE | Breast cancer doesn't run in his family. But that didn't prevent Tom Kennedy's diagnosis with the disease five years ago, and it won't stop the cancer, now in his brain and spine, from killing him.

Kennedy, 49, blames the tap water he drank for more than a decade before learning it was contaminated with the chemical compound GenX. Now terminally ill, the Verizon consultant from Wilmington, N.C., says he hopes something can be done to get GenX out of the water his wife and two daughters still use to bathe, before they fall sick too.

"I think it should be regulated ASAP," he said. "But I'm not going to hold my breath."

Part of a family of chemicals known as PFAS, GenX has been linked to liver and blood problems, as well as certain types of cancer. But EPA, tasked with regulating contaminants in drinking water, has no action planned to immediately crack down on the compound. Rather, the agency's efforts to regulate per- and polyfluoroalkyl substances in drinking water are focused on just two chemicals: PFOA and PFOS.

Even though many toxicologists and health experts want EPA to regulate all PFAS together as a class, many Americans could be drinking contaminated water for years after EPA finalizes limits on PFOA and PFOS.

"I don't want to sound greedy, but I want my family to be OK after I die," he said. "We are all Americans; they are supposed to look out for all of us."

Kennedy isn't alone.

Researchers estimate that up to 80 million Americans are exposed to PFAS in their drinking water. Attorney Rob Bilott represents some of them. His struggle to get DuPont to take responsibility for PFOA-contaminated drinking water in Parkersburg, W.Va., prompted him to write a book, "Exposure," and was the subject of the 2019 Hollywood thriller "Dark Waters."

"The reality is that the burden falls on the exposed people," he said. "If we keep this focus on one chemical at a time, we are encouraging situations like what we see with GenX."

EPA officials say they are painfully aware that the agency's actions are leaving some communities behind.

Radhika Fox, who leads EPA's Office of Water, said that the agency wants to protect people from PFAS — even "grappling" with whether and how to regulate the chemicals as a class — but that figuring it out will take time.

"I share the frustrations people have with EPA sometimes wanting us to move faster," said Fox, who also co-chairs the agency's newly created PFAS Council aimed at tackling the chemicals across EPA offices. "All I can say to communities that are suffering is, we are moving expeditiously, but we want to have a good process and we want to have a foundation in science where we are most protective of public health."

A 'really hard' problem to prove

Prized for their nonstick and water-resistant properties, PFAS are found in a range of items from household products to firefighting foam and solar panels.

For nearly 30 years, DuPont's Fayetteville Works plant used PFAS to produce items from laminated glass to fabrics, discharging its wastewater — along with PFAS like GenX — into the Cape Fear River, which serves as the water source for 350,000 North Carolinians.

By the time the public was aware of the discharges, around 2016, the plant was owned by Chemours. EPA investigated the company, which was also sued separately by both the Cape Fear Public Utility Authority and the government of North Carolina. The state's Department of Environmental Quality, under the leadership of now-EPA Administrator Michael Regan, ultimately reached a sweeping consent order requiring Chemours to provide filters and bottled water to

residents who rely on contaminated private wells.

But the \$13 million settlement left out people like Kennedy who rely on the Cape Fear River for their drinking water. They must fend for themselves as the utility's lawsuit winds its way through the court system.

"We have no recourse as residents," said Emily Donovan, a co-founder of the group Clean Cape Fear, [...]

EPA's PFAS Reporting Rule Could Help Target Sector-Specific Phaseouts

Diana DiGangi, Inside TSCA

<https://insideepa.com/tsca-news/epa-s-pfas-reporting-rule-could-help-target-sector-specific-phaseouts>

Data from EPA's proposed TSCA per- and polyfluoroalkyl substances (PFAS) reporting rule could help focus efforts to replace the chemicals with less-toxic alternatives, according to a scientist who co-authored a report on ways to eliminate perfluorinated substances from building materials.

During a July 20 webinar hosted by Collaborative on Health and the Environment on "toxic chemicals in the built environment," Green Policy Science Institute (GSPI) scientist Tom Bruton said the PFAS reporting rule will help identify not only industrial PFAS users but sectors that use them more often in products such as building materials -- which in turn would aid efforts to replace them with safer substitutes.

"EPA has just proposed a reporting rule under [the Toxic Substances Control Act (TSCA)] that would require companies to submit data on the import and manufacture of PFAS over the last ten years," he said. "And I think that in the future, eventually, this might give us a better understanding of where PFAS are being used in the built environment."

The rule, which Congress directed EPA to craft in its fiscal year 2020 defense spending bill, will establish a "one-time reporting event" for PFAS manufactured or imported since Jan. 1, 2011. Officials have touted the data that will come from that rule as key to crafting future regulations, while industry attorneys have warned that its broad scope and lack of exemptions could create heavy burdens on many companies or sectors.

Bruton said on the webcast that once the EPA-mandated data arrives and is made public, it could aid the already-widespread efforts to limit PFAS in manufactured goods.

And he pointed to a May GSPI report that he co-authored, "Building a Better World: Eliminating Unnecessary Uses of PFAS in Building Materials," which said perfluorinated chemicals are more common in building materials than is commonly known -- meaning people could be exposed to the substances merely by entering a structure made with them.

"This report is the first to document that PFAS, including fluoropolymers, are used for a wide variety of applications in the building sector. These include roofing materials, paints and coatings, sealants, caulks, adhesives, fabrics, and more," reads the report, which also details "scenarios that demonstrate how workers and the public could be exposed."

GSPI called for replacing PFAS used in those materials with "safer non-fluorinated alternatives," and Bruton said in his presentation that the TSCA-mandated reporting can help identify sectors that use the most PFAS in their products -- which would be higher priorities for replacement.

He also reiterated the report's call for the private sector to voluntarily wind down use of the chemicals, and urged "architects, designers and building owners" to be "advocate[s] for ingredient disclosure in building products," and to avoid using products made with PFAS unless they are "truly needed."

"Ask for [that information] when you're buying products," he said. "This is something that's becoming more and more common, but it's still not common enough."

For instance, last month a broad coalition of industry, government, environmental and healthcare entities backed a set of “principles” for chemical ingredient disclosures designed to promote “avoidance of chemicals of concern” and “build trust among users and producers.”

Targeted Limits

Several states are already moving forward with laws and regulations limiting PFAS uses in products seen as particular concerns, such as Maine’s newly enacted law to phase out nearly all perfluorinated chemicals by 2030 -- a trend Bruton said is “only going to grow,” especially as the European Union (EU) works toward its own strict regulations.

“This is something that is being talked about seriously in the EU, and also something that became law in the state of Maine last week, which I think is really exciting,” he said.

Environmentalists have generally backed the proposed reporting rule [...]

Bayer touts partial state court win in FIFRA preemption case

Steve Davies, Agri-Pulse

<https://www.agri-pulse.com/articles/16201-bayer-touts-partial-state-court-win-in-fifra-preemption-case>

A California Superior Court Judge has ruled a California woman’s claim that Bayer failed to warn her of the dangers of using Roundup is preempted by federal law, an argument Bayer has so far failed to make successfully in federal courts.

The company has been trying to find a way to get before the U.S. Supreme Court the issue of whether state tort law claims, which it is facing in thousands of court cases, are preempted by the Federal Insecticide, Fungicide, and Rodenticide Act. The 9th U.S. Circuit Court of Appeals ruled in May that FIFRA does not preempt such claims.

The ruling in Donetta Stephens v. Monsanto “is an important decision that adds to the growing case law holding that a state law-based cancer warning label on glyphosate-based herbicides cannot stand, as it would be in addition to, different from and in conflict with the EPA-approved, science-based label which is the law,” Bayer said in a statement.

“FIFRA is clear a state law cannot add to or impose different standards for labels s those required by the FIFRA,” San Bernardino Superior Court Judge Gilbert Ochoa found. “When considering all the facts, they come down to one thing — the EPA holds to the belief glyphosate is not likely to be a human carcinogen and pose no human health risk. Because of that, the labels or glyphosate products do not need to include any warning that use could cause cancer.”

Ochoa ruled for the plaintiff on her claims of a design defect in the product, but Bayer said, “We do not believe the plaintiff can prove the necessary elements of any design defect theory under the law.”

Western producers struggle with second-largest grasshopper outbreak in 35 years

Noah Wicks, Agri-Pulse

<https://www.agri-pulse.com/articles/16190-western-producers-struggle-with-second-largest-grasshopper-outbreak-in-35-years>

Little rainfall and high temperatures were already taking a toll on Craig French’s northern Montana rangeland. Then, grasshoppers took out half his pasture land, starting with the clover and alfalfa before moving onto the finer grasses.

Now he’s been forced to consider selling some or all of his 250 cows and 120 yearlings.

“Pastures that I’ve rotated through and got off of them and had some regrowth and was looking forward to either

grazing that next spring or in the wintertime — that grass is gone. That's not even stretching it. It's gone," he said.

This year he planted around 200 acres of barley, peas, collards and radishes as a cover crop, and on June 14, five days after a rain shower, some of the plants were nearly 6 inches tall. By June 17, almost nothing remained.

French is certain that grasshopper populations on some parts of his ranch are 10 to 12 times higher than the 8-per-square-yard threshold USDA uses to determine if the grasshopper threat has reached a level of "economic infestation," and therefore, meet the control requirements.

Officials with USDA's Animal and Plant Health Inspection Service and local extension agencies have counted more than 15 grasshoppers per square yard in areas across 34.8 million acres of land in the West, including large swaths of Montana and Oregon as well as small parts of Nevada, Idaho, Wyoming, Colorado, New Mexico, Kansas and Arizona. These states — and to a lesser degree, Utah, California, North Dakota, South Dakota and Nebraska — are all experiencing the second-largest grasshopper outbreak that the U.S. has seen in 35 years, according to Bill Wesela, a national policy manager at APHIS.

A field of Craig French's cover crops before and after being eaten by grasshoppers. "Grasshopper outbreaks are partly related to the climate conditions," said Kevin Wanner, an associate professor of plant sciences and plant pathology at Montana State University.

"They naturally increase their numbers during hot, dry periods because there are some natural diseases, but the natural diseases of grasshoppers are more prominent during cool, wet seasons than they are during hot and dry seasons."

Using the authority of the Plant Protection Act, passed in 2000, APHIS provides treatments for producers through its Grasshopper and Mormon Crickets Program. Funded by allocations made annually by Congress, the program supports surveying of grasshopper populations and suppression efforts on public, state and private lands where grasshoppers are at levels of "economic infestation."

As of July 19, APHIS has treated approximately 805,000 acres of rangeland for grasshoppers in Arizona, Idaho, Montana, Nevada, Utah and Wyoming, according to Bill Wasela, a national policy manager at the agency. By using a system known as "reduced agent and area treatments," or RAATS, APHIS targets particular high-population sections of land within a broader 1.6-million-acre area that the agency is working to protect.

"We're not trying to eliminate all the grasshoppers," Wesela said. "We're just trying to control and suppress the populations to a manageable, reasonable amount."

Wesela said APHIS has primarily been spraying diflubenzuron, also known as Dimilin 2L, which impacts the formation of nymph grasshoppers' exoskeletons in the molting process. Applicators in planes or on ATVs use the RAATS method to apply in grasshopper hot spots, while leaving rocky or low-forage areas alone.

APHIS employees are also allowed to use carbaryl and malathion when spraying, but only in more severe cases. Wesela said diflubenzuron is preferred because it's less expensive and specifically targets grasshoppers.

However, the program has drawn criticism from some environmental groups, including the Xerces Society for Invertebrate Conservation and the Western Watersheds Project. They argue these insecticides pose a threat to other insect species in the region and that APHIS hasn't been transparent with the public about its treatment plans. [...]

New York Finalizes Regulations Banning Pesticide Chlorpyrifos

Keshia Clukey, Bloomberg Law

<https://news.bloomberglaw.com/environment-and-energy/new-york-finalizes-regulations-banning-pesticide-chlorpyrifos?context=search&index=0>

New York State will fully ban the toxic pesticide chlorpyrifos by the end of the month, Gov. Andrew Cuomo (D) announced on Wednesday.

The state Department of Environmental Conservation finalized regulations to phase out the chemical, which has been linked to neurological damage in children and has been banned for home use nationally since 2001.

- Chlorpyrifos is one of the most common pesticides, and is used on a wide array of crops such as corn, apples, and almonds. A federal appeals court in April ordered the Environmental Protection Agency to ban chlorpyrifos residue in food, or determine how much to reduce the allowable amount.
- New York joins Hawaii and California, which have imposed restrictions.
- New York canceled registration of 29 pesticides containing chlorpyrifos in December 2020, and will cancel the remaining 15 on July 31. Anyone still possessing the products will be required to properly dispose of them or send them out of state by Feb. 1, 2022, according to the regulations.

OSTP Will Hold Public Listening Sessions on Scientific Integrity and Evidence-Based Policymaking

Lynn L. Bergeson and Carla N. Hutton, Bergeson & Campbell Blogs

<http://www.tscablog.com/entry/ostp-will-hold-public-listening-sessions-on-scientific-integrity-and-eviden>

The White House Office of Science and Technology Policy (OSTP) announced on July 20, 2021, that it is organizing a series of three virtual listening sessions to hear about issues and concerns related to scientific integrity from members of the public who produce, communicate, and use scientific and technical information. 86 Fed. Reg. 38363. According to OSTP, it will use perspectives gathered during the virtual listening sessions to inform the assessment of federal agencies' scientific-integrity policies and identification of best practices and lessons learned that the National Science and Technology Council's Task Force on Scientific Integrity is preparing, pursuant to the January 2021 Presidential Memorandum on Restoring Trust in Government Through Scientific Integrity and Evidence-Based Policymaking.

Each of three listening sessions will be organized around a particular theme and audience:

- Session 1 (Wednesday, July 28, 2021, 2:00 p.m. to 4:00 p.m. (EDT)): Communications, including using effective policies and practices to improve the communication of scientific and technological information, including for engagement of federal scientists and contractors with news media and on social media. The target audience includes individuals from news media, science writers, and science communicators;
- Session 2 (Thursday, July 29, 2021, 11:00 a.m. to 1:00 p.m. (EDT)): Science and Education, including using effective policies and practices to support professional development of scientists and researchers of all genders, races, ethnicities, and backgrounds; to address scientific-integrity issues related to emerging technologies, such as artificial intelligence and machine learning, and evolving scientific practices, such as citizen science and community-engaged research; to improve training of scientific staff about scientific integrity; and to handle disagreements about scientific methods and conclusions. The target audience includes scientists, engineers, and educators from the federal and non-federal sectors; and
- Session 3 (Friday, July 30, 2021, 2:00 p.m. to 4:00 p.m. (EDT)): Use of Scientific and Technical Information, including using the effectiveness of federal scientific integrity policies to promote trust in federal science and address concerns about a lack of scientific integrity impeding the equitable delivery of the federal government's programs. The target audience includes individuals who use federal scientific and technical information for decision-making or provision of services; individuals from disadvantaged communities; and other consumers of science.

Participants in all sessions may also comment on the predominant challenges they perceive to scientific integrity in

federal agencies and effective practices for minimizing political or other inappropriate interference in the conduct, communication, or use of federal science. Speakers will have up to two minutes each to make a comment. As many speakers will be accommodated as the scheduled time allows. Individuals unable to attend the listening sessions or who would like to provide more detailed information may respond to the Request for Information (RFI) to Improve Federal Scientific Integrity Policies. Comments on the RFI are due July 28, 2021. The registration deadline for the virtual listening sessions is July 23, 2021, at 5:00 p.m. (EDT).

Millions of Acres in West To Be Sprayed with Toxic Insecticides for Grasshoppers

NA, Beyond Pesticides

<https://beyondpesticides.org/dailynewsblog/2021/07/millions-of-acres-in-west-to-be-sprayed-with-toxic-insecticides-for-grasshoppers/>

(Beyond Pesticides, July 21, 2021) Western states are in the midst of one of the largest spray campaigns in recent history, targeting native grasshopper species on more than two million acres of rangeland with highly toxic insecticides. Grasshopper populations have exploded this year due to the West's ongoing drought, and government officials at the U.S. Department of Agriculture are hoping that hazardous pesticide use will stop the voracious winged insects from consuming forage used by cattle operations. Environmental groups are urging changes to the program, which has conducted insecticide campaigns against the native grasshoppers since the 1930s. "Aerial application of insecticides on this scale will eliminate millions of insects that pollinate, recycle plant nutrients and perform natural pest control," said Sharon Selvaggio, Pesticide Program Specialist with the Xerces Society. "Insecticide sprays on this scale across native ecosystems are short-sighted and unsustainable."

According to a June 2020 press release, USDA's Animal and Plant Health Inspection Service (APHIS) is spending \$5.3 million dollars of taxpayer money in order to conduct what it calls "suppression treatments." APHIS claims the \$5.3 million will protect \$8.7 million worth of agricultural resources, but advocates argue that the agency has failed to meet the "level of economic threshold" required under federal law to justify spraying. Calculations indicate that spraying costs between roughly \$2-45 per acre, while the American taxpayer generates roughly \$0.17 per acre from grazing leases that charge ranchers a mere \$1.35/month to place cattle on public lands in the west.

Moreover, APHIS's justification of the expense does not include an evaluation of the ecological costs of the spray campaign. The agency assumes the spray campaign will adequately address the grasshopper infestation, but fails to account for the value of natural predators. Indiscriminate pesticide spray applied across large swaths of land are sure to kill off natural enemies of grasshopper species that may otherwise control the animals and could help prevent future infestations.

In addition to natural predators, there is significant value that can be ascribed to pollinators and other beneficial species that are likely to have their populations reduced by pesticide applications. Western monarch butterflies are on the precipice of extinction, and need improved conditions, not increased threats in order to stave off the worst.

Organic farmers in states like Montana are split on the campaign, according to reports in the Associated Press. Concerns over the loss of certification are butting up against the desire to be a good neighbor. As with other issues concerning drift and organic farming, the onus is on the organic farmer to protect their crops from chemical exposure, not on the applicator to prevent pesticide trespass. This creates an uneven playing field that tilts towards pesticide use as the status quo, despite organic practices being the least impactful, and most sustainable approach to farming and pest management.

Over the last 15 years, APHIS has primarily relied on the hazardous insecticide diflubenzuron to manage the grasshoppers. But there is indication that, if conditions persist, the agency could employ malathion and carbaryl— some of the most toxic pesticides that remain on the market. Malathion is an acutely toxic organophosphate insecticide that is associated with neurotoxicity, kidney and liver damage, and cancer. A recently published investigative report in The Intercept found that the U.S. Environmental Protection Agency has dismissed evidence linking malathion to cancer for

decades. Malathion is also highly toxic to birds and pollinators, and its use jeopardizes over 1,000 endangered species throughout the country.

Carbaryl is a carbamate insecticide that has also been linked to a range of health impacts, from cancer to diabetes and other metabolic diseases, as [...]

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